

*Application No. 09/880615*  
*Page 4*

*Amendment*  
*Attorney Docket No. S63.2N-6531-US03*

### REMARKS

In the Office Action dated July 1, 2003 claims 23, 25, 26, 29, 30, 32, 34, and 35 were rejected under 35 USC 102(e) as being anticipated by Yan (5,843,172). Claims 23, 24, 27-30, 32, 33, and 36-40 were rejected under 35 USC 103(a) as being unpatentable over Richter in view of Saunders (5,780,807). Claims 27, 28, and 36-39 were rejected under 35 USC 103(a) as being unpatentable over Yan in view of Gray et al. Each of these rejections will be addressed under headings corresponding to the paragraph numbering of the Office Action. Claims 23 and 32 have been amended. No new matter has been added.

### (2)

Claims 23, 25, 26, 29, 30, 32, 34, and 35 were rejected under 35 USC 102(e) as being anticipated by Yan (5,843,172). The Office Action states that Yan discloses a method wherein a tube has at least two longitudinally spaced regions of different predetermined physical characteristics. Applicant respectfully disagrees. Nonetheless, Applicant has amended claim 23 to recite a tube having at least two different longitudinally spaced regions of different predetermined porosities and each region having substantially the same porosity about its circumference.

Yan does not have different longitudinally spaced regions of different predetermined porosity. Rather, Yan has mere variation in pore size. To point from one pore to another in order to show longitudinally spaced regions of different predetermined porosity is not proper. Firstly, this is not predetermined; it is random. Secondly, porosity is the ratio of void space within the volume being measured. Thus, porosity must be measured over a region rather than an individual pore or two. The porosity of any individual pore is always 100%, and thus not different as stated in a limitation of claim 23.

In addition to having longitudinally spaced regions of different predetermined porosity, amended claim 23 of the instant application recites that each region has substantially the same porosity about its circumference. Yan does not disclose this feature. Instead, Yan has the same random variation in the longitudinal direction as it does about its circumference.

*Application No. 09/880615*  
*Page 5*

*Amendment*  
*Attorney Docket No. S63.2N-6531-US03*

With disclosure in the drawings, claim 32 has been amended to recite a tube having longitudinally spaced regions of different predetermined porosities, and subsequently, cutting a plurality of openings in the tube to form a stent having multiple serpentine bands such that a first band has a different porosity than a second band. Yan does not disclose this feature. Rather, Yan discloses bands having the same porosity.

In light of the above, Applicant respectfully requests that the anticipation rejection of independent claims 23 and 32 and their dependent claims be withdrawn.

(4)

Claims 23, 24, 27-30, 32, 33, and 36-40 were rejected under 35 USC 103(a) as being unpatentable over Richter in view of Saunders (5,780,807). The Office Action states that Richter discloses all the features of the instant claims except subsequently cutting the stent from a tube. The Office Action further states that because Saunders'807 discloses cutting a stent from a tube that the instant claims are obvious in light of Saunders. Applicant respectfully disagrees.

Even if the proposed combination were made, the combination would not disclose all of the elements of the instant claims. Specifically, amended independent claim 23 recites longitudinally spaced regions of different predetermined porosities and each region having substantially the same porosity about its circumference, and subsequently cutting a stent from the tube. Richter does not teach or suggest different porosities in different regions.

The Office Action uses Saunders '807 merely to show that cutting a stent from a tube is known in the art. However, with these references the Office Action neglects addressing the inventiveness of cutting a stent from a tube which has previously been manufactured such that the tube has at least two different longitudinally spaced regions of different predetermined porosity prior to being cut. This inventive feature must be taught or suggested to show obviousness.

Claim 32 has been amended to recite providing a tube having at least two different longitudinally spaced regions of different predetermined porosity and subsequently cutting a plurality of openings in the tube to form a stent having multiple serpentine bands such that a first band has a different porosity than a second band. Richter does not teach or disclose these features nor are these missing features taught or disclosed in Saunders.

*Application No. 09/880615*  
*Page 6*

*Amendment*  
*Attorney Docket No. S63.2N-6531-US03*

In light of the above, the proposed combination does not render obvious the instant claims and withdrawal of the rejection is requested.

(5)

In the Office Action, claims 27, 28, and 36-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yan in view of Gray et al. Gray is relied upon to teach the use of serpentine segments extending about the circumference of the stent.

Claims 27, 28, and 36-39 are patentable over the combination of Yan and Gray for the same reasons that the independent claims from which they depend are patentable over Yan as discussed in paragraph 2 above. Gray does not provide the missing teaching of a tube which has at least two different longitudinally spaced regions of different predetermined porosity and each region having substantially the same porosity about its circumference.

Given the failure of the proposed combination to disclose all of the elements of the instant claims, withdrawal of the rejection is requested.

#### CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 23-30 and 32-40, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: October 24, 2003

By: Brendan Babcock  
Brendan C. Babcock  
Registration No.: 50705

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001  
f:\wpwork\lcb\6531US03\_amd\_20030923.doc